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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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December 18, 1996

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: In the Matter of Federal-State Joint Board on Universal Service
FCC 96-J3/CC Docket No. 96-45

Dear Secretary:

Pursuant to FCC Rules, Sections 1.415 and 1.419, enclosed is the original and four copies of the Comments of the Washington Utilities and Transportation Commission (including two copies marked "Extra Public Copy") regarding the above referenced matter.

Sincerely,

STEVE McLELLAN
Secretary

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	
Universal Service	)	

COMMENTS OF THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
IN RESPONSE TO THE RECOMMENDED DECISION

OF

THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE

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I. INTRODUCTION

The Washington Utilities and Transportation Commission "(WUTC" or "Commission") welcomes the opportunity to provide additional information to assist the Federal Communications Commission (FCC) in addressing the universal service issues presented by the Telecommunications Act of 1996 ("the Act" or "the 1996 Act").[1] The Commission filed both opening and reply comments in response to the FCC Notice of Proposed Rulemaking (NPRM) of March 8, 1996. The Commission also filed comments in response to supplemental questions of the Joint Board staff on August 1, 1996. In this fourth set of comments, the Commission makes several points in response to the recommendations of the Joint Board,[2] pursuant to the Common Carrier Bureau's notice of November 18, 1996. The Commission reserves the right to address additional issues in the reply round if appropriate.

II. PRINCIPLES

The principle of competitive neutrality can be defined in the context of universal service as, on the one hand, ensuring that all companies are assessed a fair and equitable amount of contribution to universal service, and on the other, ensuring that the mechanism for dispersing the funds does not confer undue

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[1] Pub. L. No. 104-104, 110 Stat. 56, 71 (1996), *to be codified at* 47 USC § 151 *et seq.*

[2] *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 96J-3, Recommended Decision, released November 8, 1996 ("Recommended Decision").

competitive advantage on any local exchange service provider, either incumbent or entrant. Existing universal service mechanisms fail to provide for competitive neutrality in either respect.

The two primary sources of funding to maintain universal service are access charges and the implicit funding which comes from the averaging of retail local service rates. Funding universal service on the basis of access charges puts local exchange companies at a competitive disadvantage with respect to competitive access providers, including other local exchange companies. It creates a financial incentive for large telecommunications customers to bypass the incumbent local exchange company, even if the incumbent is the most efficient provider and there is no economic reason for bypass. Similarly, rate averaging creates an incentive for competitive local exchange companies to serve those customers who are less costly to serve than the average. This financial incentive is driven by the practice of rate averaging rather than whether or not it is more economically efficient for the incumbent to serve that customer group.

Competitive Neutrality in Supporting High Cost Areas

The key requirement in achieving competitive neutrality in universal service funding is to ensure that neither eligibility nor level of funding depend on the identity of the carrier providing service in a particular high-cost area. Regardless of the level of funding or whether it is calculated using an incumbent's actual costs, a proxy model, or some other method, the amount should be paid to whatever carrier is selected by that customer to provide local exchange service.

Whatever proxy model is ultimately chosen, support levels should not only be *carrier-blind* but also as *customer-specific* as administratively feasible. Accurate information must be used to measure and disaggregate the cost of serving customers, and the support level should be based on that cost. While there are many disputes about exact costs, proxy cost models demonstrate that costs vary widely among customers in any particular study area or even in any particular wire center. Any support mechanism that averages the funding level across areas with different costs will invite uneconomic cream-skimming. Support payments would be insufficient to attract competition for high-cost areas and would promote uneconomic competition for low-cost areas.

Competitive Neutrality in Paying for Universal Service

In order to achieve a fair and equitable contribution, all companies providing telecommunications services should be required to contribute to the universal service fund. We agree with the Joint Board's recommendation to broadly construe the statutory language regarding the meaning of telecommunications provider. In addition, the charges assessed should be based on an equitable assessment method that aligns the amount to be contributed with the benefits derived by the existence of universal service. A uniform percentage of net revenue has been widely discussed as a reasonable funding mechanism. Compared to the current mechanisms, which rely heavily on access charges, a uniform percentage contribution would be more fair and equitable.[3]

Cost Proxy Model Issues Related to Competitive Neutrality

With regard to competitive neutrality, cost proxy models should have the following characteristics: 1) The economic costs estimated by the model should never exceed the book costs of serving an exchange area; 2) The proxy models should produce similar costs for exchange areas that are similarly situated with regard to geographic and climatic conditions; and 3) A single set of cost inputs should be used for estimating universal service costs for each LEC in each state.

These recommended characteristics result from work by WUTC staff on comparing the investments produced using the cost proxy models with the actual book investment for a number of Washington local exchange carriers. Staff observed that the proxy model investments predicted for small LECs differed greatly from existing book costs, and in one case exceeded the actual book costs

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[3]However, the FCC should carefully consider the possibility that a uniform percentage contribution will result in a de-averaging of rates below whatever is chosen as the benchmark. The various proxy cost studies submitted to the FCC show that for any chosen benchmark rate, the customers below that benchmark vary greatly in their cost of service. Carriers will have an economic incentive to identify and serve the lowest-cost customers, and this incentive will not be eliminated by a uniform percentage charge. There will be considerable incentive for rates to be de-averaged below whatever rate is chosen as the benchmark. Achieving both competitive neutrality and uniform rates may well require that carriers serving low-cost customers pay more into the universal service fund than carriers who serve average-cost customers.

of the LEC. The differential was less for larger LECs. An acceptable proxy model will need to demonstrate that it can consistently and correctly estimate the economic costs of small exchanges.

The use of a single set of inputs to estimate costs by both the state and the FCC for each company in each state is as important as consistency in the ability of proxy models to estimate economic costs. This scheme would ensure that a single cost estimate was used for determining support levels for each company and allow each state to determine applicable forward looking costs. We agree with the discussion in Appendix F of the Joint Board report noting the deficiencies and needed refinements to the cost proxy models.

III. SCHOOLS AND LIBRARIES

The Washington Commission supports the Recommended Decision. Our previous comments in this proceeding, while strongly supporting the general policy goals of school and library telecommunications access, cautioned against the creation of an untargeted and expensive subsidy program. The Joint Board has arrived at a reasonable balance between the need to advance technological literacy and provide access to advanced services, and the danger of creating a burdensome subsidy program. In particular, the Washington Commission supports the Joint Board adoption of an annual cap on school and library support, set at a fiscally prudent level. Likewise, the matrix approach, in general, provides a mechanism which will tailor the amount of support to need, limiting expenditures to necessary levels. We also concur with the decision not to adopt a 100 percent discount for the reasons stated in the Recommended Decision. Finally, we believe that the competitive bidding process will act as a positive mechanism to limit the amount of support required from the fund.

Identification of High Cost Areas

The Washington Commission supports the proposal in the Recommended Decision for basing support, in part, on whether the school or library is located in a high-cost area. Schools and libraries in rural areas typically encounter higher overhead and hence higher costs on a per pupil basis. This is likely to result in limiting funds available for telecommunications. The existing high-cost fund criteria, while a workable means of determining eligibility, are currently under review in this proceeding and may not be retained. The Commission does not, at this time, have a recommendation as to a substitute standard for high-cost school and library support. The criteria adopted, however, should be consistent with the general criteria adopted for the high-cost fund in this proceeding.

Measures of Economic Disadvantage

To a large extent, the determination of an appropriate measure of economic disadvantage for schools and libraries is best addressed by those institutions.

However, the use of the national school lunch program as a gauge of eligibility for universal service support is reasonable. The use of this measure, or others which look at the level of economic disadvantage of the student population itself, is likely to result in a more accurate determination of the school's need level than a measure which examines general community income (e.g. Census Bureau data). Average community income levels, based on census or other data, do not necessarily reflect conditions within individual schools or school districts. We also concur with the Joint Board's recommendation that school districts examine the needs of particular schools within their districts so that the most disadvantaged schools receive the most benefit.

With respect to non-public schools, the Joint Board suggests that support levels be based on the theoretical eligibility of the non-public school students for a program such as the student lunch program. We concur with this approach. Use of the same measure for both public and non-public schools will result in a more equitable determination of support and in ease of administration. As noted above, the problem with using a test of "economic disadvantage," such as average area income, external to the school itself, is that the location of the non-public school is likely to have little or no relation to the ability of the school to "afford" access to telecommunications services. This is even more the case for non-public than for public schools.

Libraries present a different situation. The Joint Board tentatively suggests that they be entitled to a discount based on their location in a school district serving economically disadvantaged students. We are concerned that this approach may be too imprecise for identifying libraries entitled to support, given that many libraries serve areas encompassing more than one school district. In addition, to the extent that the school population is not representative of the community served by the library (e.g. school magnet programs drawing non-area students), libraries may suffer from having eligibility tied to nearby schools.

Aggregation of Eligible and Ineligible Entities' Demand

The Washington UTC strongly agrees with the Joint Board's conclusion that the benefits of permitting schools and libraries to join in consortia with other customers in their community outweigh any danger of significant abuse, especially if careful records are kept and reasonable cost allocations are made. Recommended Decision, ¶ 596. The recommendation also concluded that severely limiting consortia would not be in the public interest because it prevents schools and libraries from becoming attractive customers and/or from benefitting from efficiencies.[4] Therefore, the Joint Board recommends, and we agree, "... that state commissions undertake measures to enable consortia of eligible and ineligible

[4] *See, e.g..,* Washington UTC comments at 15, and further comments at 7. The Washington UTC urges the FCC to design rules which permit the continuation of existing aggregation arrangements and encourage the initiation of new efforts.

entities to aggregate their purchases of telecommunications services and other services being supported through the discount mechanism, in accordance with the requirements set forth in section 254(h)."

It is absolutely essential that schools, libraries and other public facilities participate in community-based demand aggregation efforts to ensure that advanced network services are available to all Americans.

IV. LOW-INCOME CONSUMERS

The current Lifeline and Link-up America programs are targeted toward low income groups, as the Joint Board Recommended Decision notes. The programs are voluntary and all states do not participate in all programs. Only 39 states participate in the Lifeline program, and 45 states plus Washington DC participate in Link-up America.

Penetration levels highlight the disparity for low income consumers. According to the November 1994 Census Bureau population survey, 23% of households with annual income less than $5,000 do not have telephone service at all. The percentage of households without telephone service declines steadily as income rises, as does the percentage of income required to pay for service. Households with annual incomes above $35,000 have penetration rates of 98%. The majority of households without telephone service are low income. For households with low incomes, telephone service appears not to be affordable. Low income households are more likely to drop phone service as well.

In Washington, as in most states, the Lifeline program determines eligibility by household, based upon enrollment in one or more of the following:

- Aid to Families with Dependent Children
- Supplemental Social Insurance
- Medicaid
- Food Stamps

Washington State currently has 6.9% of its population on public assistance programs. Of those eligible, only 23.6% currently participate in the Lifeline program, and only 11.6% participate in the Link Up program.

The Washington State Department of Social and Health Services (DSHS) currently administers the Washington Telephone Assistance Program (WTAP) which augments the current federal programs. Included as Attachment "A" to these comments is a letter representing WTAP's observations and comments in response to the Joint Board's Recommended Decision. WTAP is closest to the issues as the administrator of these programs. The Washington UTC agrees that the $5.25 baseline amount suggested in the Recommended Decision is adequate to begin with although it may need to be modified as time passes and circumstances change.

The Joint Board concluded that each state should continue to have primary responsibility for determining that rates for (basic) local service are affordable based on its consideration of the following non-rate factors:

* Local Calling Area and Size

* Income Levels

* Cost of Living

* Population Density

* Other Socio-Economic Indicators

The Recommended Decision concludes that state commissions have the ability, knowledge, and expertise to understand and evaluate these factors and to determine ultimately how they affect rate affordability. The Washington Commission supports this recommendation.

We also support the recommendation that the FCC should continue to monitor subscribership levels and work together with states to determine the cause of any decrease in a state's level, and the implications for rate affordability in that state. Subscribership does provide an objective criterion to assess the overall success of state and federal universal service policies in maintaining affordable rates.

The Joint Board recommendation that the Lifeline and Link Up programs be retained and modified to make them competitively neutral, and to ensure that they are available to all low-income consumers, is supported by the Commission. We agree that the services designated for support for rural, insular, and high cost areas should also be supported and available to low-income consumers through these programs. For Link Up we agree that voluntary toll limitation or toll blocking should be provided to low-income consumers free of charge. We agree with the recommended decision that eligibility should also be consistent with the current Lifeline framework, and that states should retain sufficient flexibility to target support for each state's particular needs and circumstances, as long as eligibility for state matching funds are directly related to income. The Commission believes the proposed provisions in the Lifeline and Link-Up America programs sufficiently address the concerns of subscribers' rates in populous states being generated primarily from federal sources. This conclusion is based on the cap on matching funds and the Joint Board's emphasis in making the current programs fit well with the new environment while enhancing rather than degrading the Lifeline and Link-Up programs.

V. ADMINISTRATION

The notice asks for comment on whether the contributions for universal service high-cost and low-income support mechanisms should be based on both intrastate and interstate revenues. As noted in a number of the separate statements to the Recommended Decision, this decision is to some degree dependent on the determination of the high-cost assistance mechanism. There are strong arguments in favor of relying upon both sources of revenue as the traditional distinctions between interstate and intrastate begin to lose their significance, based on technological and market convergence. The Commission has no formal recommendation at this time, however, pending consideration of more reliable information on the size of the fund and other relevant factors.

VI. CONCLUSION

The Washington Utilities and Transportation Commission urges the FCC to take the foregoing considerations into account as it adopts rules to implement the universal service provisions of the Act. The Washington UTC looks forward to further participation and further opportunity to comment on these matters before the Joint Board and the FCC.

DATED this 18th day of December 1996, at Olympia, Washington.

RICHARD HEMSTAD, Commissioner
Washington Utilities and Transportation Commission

WILLIAM R. GILLIS, Commissioner
Washington Utilities and Transportation Commission

ATTACHMENT "A"

STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

December 6, 1996

TO: Rebecca Beaton, Regulatory Consultant
WA Utilities and Transportation Commission

FROM: Grace Moy, Customer Service Specialist
DSHS/DIA/WA Telephone Assistance Program

SUBJECT: FCC UNIVERSAL SERVICE RECOMMENDATIONS
(CC Docket 96-45)

Thank you for inviting WTAP to review and make comment on CC Docket 96-45. I understand that you intend to incorporate our comments with WUTC recommendations.

In general, WTAP is in agreement with the Joint Board's summary recommendations for universal service. Our comments are directed to the Board's section entitled Programs for Low-Income Consumers:

The Joint Board recommends revising the Lifeline and Link Up programs in the following manner:

1. Expand both the Lifeline and Link Up programs so that eligible low-income consumers in every state and territory would be able to receive support. Every carrier deemed eligible for universal service support would be required to participate:

Comment: Agree. This recommendation provides Lifeline support for low-income consumers without regard to the state providing matching funds, or the state in which they reside.

2. For each eligible consumer, federal support would be $5.25. The federal fund would also contribute an additional $1.00 for every $2.00 a state contributes to Lifeline support. The maximum amount of these federal matching funds would be $1.75. Consequently, federal support would be capped at $7;

Comment: Agree. Currently, participating WTAP households pay the first $9.25 (referred to as the client threshold) of the their monthly local phone bill, with half of the balance paid by federal support (NECA) up to $3.50 and the remaining paid by

state subsidy. The WTAP subsidy varies statewide, since local phone service charges differ by telephone company and service area. This variance, and any possibility of a substantial telephone rate increase could jeopardize the solvency of the program.

In 1994, WTAP proposed legislation to change the current payment method to a base subsidy formula for Lifeline support based on forecast usage to ensure fiscal integrity of the program. The proposal was for WTAP to pay the first $2.50 of the local service phone bill, with a matching amount provided by federal support (NECA), and the household would pay the balance. The proposal received extensive negative comment and was subsequently withdrawn. The main concerns were that individual customer subsidy amounts would be reduced for those with the highest local rates and customers living in rural areas would be negatively impacted.

The Joint Board recommendation provides a base subsidy formula not unlike the 1994 proposed legislation.

3. Eligible low-income consumers would receive access to the same designated services identified for support in rural, insular, and high cost areas. In addition, these consumers would pay no charge for access to toll blocking and toll limitation , but only to the extent that the carrier has the technical capability to provide these services;

Comment: Agree - no additional comments

4. Reduced service deposits if a low income consumer accepts toll blocking; and

Comment: Agree - no additional comments

5. Carriers could not disconnect a Lifeline customer's local service for non-payment of toll charges (a limited waiver of this requirement will be available for some carriers).

Comment: Agree - A substantial number of customers request new service in their minor's name or social security number, because they are not able to receive service due to non-payment of toll charges. Consequently, they are verified "not eligible" to participate in Link Up or Lifeline.

Please don't hesitate to call if you have any questions (360) 413-3107.

cc: Liz Dalton
Chuck Pollock

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 96-45

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	
	)	

CERTIFICATE OF SERVICE

I Certify under penalty or perjury under the laws of the State of Washington that on December 18, 1996, I served true and correct copies of Comments of Washington Utilities and Transportation Commission and this Certificate of Service on the following persons as set forth below via First Class Mail:

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